

SCS Carbon Transport LLC, Case No. PU-22-391

December 21, 2023, Formal Hearing

ND PUBLIC SERVICE COMMISSION

<p style="text-align: right;">1</p> <p style="text-align: center;">STATE OF NORTH DAKOTA PUBLIC SERVICE COMMISSION</p> <p>SCS Carbon Transport LLC Midwest Carbon Express CO2 Pipeline Project Siting Application</p> <p style="text-align: right;">Case No. PU-22-391</p> <p style="text-align: center;">TRANSCRIPT OF FORMAL HEARING December 21, 2023 Bismarck, North Dakota</p> <p style="text-align: center;">APPEARANCES</p> <p>Commissioners Randy Christmann, Sheri Haugen-Hoffart, and Substitute Decisionmaker Timothy J. Dawson</p> <p>LAWRENCE BENDER and BRET DUBLINSKE, Fredrikson & Byron, P.A., on behalf of Applicant SCS Carbon Transport LLC</p> <p>RANDALL J. BAKKE, Bakke Grinolds Wiederholt, on behalf of Intervenor John H. Warford as Trustee of the John H. Warford, Jr. Revocable Trust and Chad Moldenhauer and Chad Wachter</p> <p>STEVE J. LEIBEL, Knoll Leibel LLP, on behalf of Intervenor/Landowners</p> <p>KEVIN PRANIS, on behalf of Intervenor Laborers District Council of Minnesota and North Dakota (LIUNA)</p> <p>JULIE LAWYER, Burleigh County State's Attorney, on behalf of Burleigh County</p> <p>DERRICK BRAATEN, Braaten Law Firm, on behalf of Emmons County</p> <p>ZACHARY PELHAM, Special Assistant Attorney General Advisory Counsel to the Public Service Commission</p>	<p>1 COMMISSIONER CHRISTMANN: Good afternoon, 2 everyone. This is a formal hearing on the Summit Carbon 3 pipeline case. And I'm Randy Christmann, chair of the 4 Commission, joined by Commissioner Sheri Haugen-Hoffart 5 and independent decisionmaker and judge Tim Dawson. 6 Just a couple comments I want to make before we 7 get started because there are some distinctions between 8 what you've seen in the past in this case and today. 9 But even before that I want to point out, as I have in 10 some past cases, that this Commission has a proud 11 history of running our hearings and meetings in an 12 orderly manner. And I know the era in which we live, a 13 lot of meetings are marked by hissing and booing or 14 clapping and yelling and waving signs and stuff. We've 15 never done that. And I would ask respectfully for you 16 all to help us to maintain that tradition of having a 17 respectful debate and allowing everyone to speak in 18 their turn. Everyone will be allotted equal time by the 19 judge and run a mature, responsible hearing here. 20 The other thing that I wanted to point out that 21 is a distinction, the previous cases that I see some 22 familiar faces and I know some of you have attended have 23 been evidentiary hearings. And while people speak to us 24 and they're under oath, there's a mix of, like, legal 25 facts as well as opinions in there. You know, you can</p> <p style="text-align: right;">PAGE 3</p>
<p style="text-align: right;">2</p> <p style="text-align: center;">C O N T E N T S</p> <p>Argument by MR. DUBLINSKE 9 Argument by MR. BRAATEN 19 Argument by MS. LAWYER 33 Argument by MR. BAKKE 45 Argument by MR. LEIBEL 56 Argument by MR. PRANIS 64 Rebuttal by MR. DUBLINSKE 74</p> <p style="text-align: center;">-----</p>	<p>1 give your opinion about the value of this area versus 2 the value of that area. 3 This is different. This is not an evidentiary 4 hearing but a formal hearing to take legal oral 5 arguments on one specific topic. We are here today to 6 talk about whether permits issued by this Commission for 7 liquid or gas transmission facilities, whether those 8 permits supersede and preempt local land use or zoning 9 regulations or do they not supersede. That is the 10 question before us. 11 And so opinions, like even our own opinions of 12 whether it should or not, are really beside the point. 13 It's what does the law say. And so that's what we're 14 going to have, oral arguments. All sides will get a 15 fair chance to speak and deliver their legal arguments 16 and we will take them under advisement and make a 17 decision. 18 With that, I have no other comments. 19 Commissioner Haugen-Hoffart, do you? 20 COMMISSIONER HAUGEN-HOFFART: No, I do not. 21 Thank you. 22 COMMISSIONER CHRISTMANN: And Judge Dawson. 23 SUBSTITUTE DECISIONMAKER DAWSON: No comment. 24 COMMISSIONER CHRISTMANN: Thank you. 25 Our administrative law judge, Hope Hogan, will</p> <p style="text-align: right;">PAGE 4</p>

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<p>1 be running the hearing.</p> <p>2 I thank you for being here, Judge Hogan, and</p> <p>3 I'll turn it over to you.</p> <p>4 ALJ HOGAN: Thank you, Commissioner.</p> <p>5 For our record, let it reflect that it's</p> <p>6 December 21st, 2023, at 2 p.m. This is the time and</p> <p>7 date and place set by the notice of hearing on a motion</p> <p>8 issued by the North Dakota Public Service Commission in</p> <p>9 Case No. PU-22-391. This hearing is being held today at</p> <p>10 the Pioneer Room at the State Capitol in Bismarck, North</p> <p>11 Dakota.</p> <p>12 As Commissioner Christmann indicated, my name is</p> <p>13 Hope Hogan and I am the administrative law judge that's</p> <p>14 been designated at the request of the Public Service</p> <p>15 Commission to serve as a procedural hearing officer in</p> <p>16 this matter, which means I'm not a decisionmaker, but</p> <p>17 I'm merely directing these proceedings in an orderly</p> <p>18 manner.</p> <p>19 I'd ask everybody at this time to check their</p> <p>20 cell phones to make sure your cell phone is either</p> <p>21 silenced or turned off so that we don't have cell phone</p> <p>22 interruptions during our hearing today.</p> <p>23 SCS Carbon Transport LLC has filed a renewed</p> <p>24 motion to declare Burleigh and Emmons County ordinances</p> <p>25 superseded and preempted in this proceeding. On October</p> <p>PAGE 5</p>	<p>1 Commission. To my left is Public Utilities Director</p> <p>2 Victor Schock. Thank you.</p> <p>3 ALJ HOGAN: Mr. Bakke.</p> <p>4 MR. BAKKE: Good afternoon. Randall Bakke on</p> <p>5 behalf of what we're referring to as the Bismarck</p> <p>6 intervenors, which is Chad Wachter, John Warford, and</p> <p>7 Chad Moldenhauer.</p> <p>8 ALJ HOGAN: Thank you.</p> <p>9 Mr. Leibel.</p> <p>10 MR. LEIBEL: Steve Leibel of the Bismarck law</p> <p>11 firm of Knoll Leibel, and I'm here on behalf of the</p> <p>12 landowner intervenors, which, as the Commission knows,</p> <p>13 they're throughout the state.</p> <p>14 ALJ HOGAN: Ms. Lawyer.</p> <p>15 MS. LAWYER: Julie Lawyer on behalf of Burleigh</p> <p>16 County.</p> <p>17 ALJ HOGAN: And Mr. Braaten.</p> <p>18 MR. BRAATEN: Derrick Braaten with Braaten Law</p> <p>19 Firm on behalf of Emmons County. And I have sitting</p> <p>20 next to me Erin Magrum, chair of the Emmons County</p> <p>21 Commission.</p> <p>22 ALJ HOGAN: All right. Thank you.</p> <p>23 A procedure for this hearing was set and</p> <p>24 provided to the parties prior to today's hearing. And</p> <p>25 just to summarize, each party will be given 20 minutes</p> <p>PAGE 7</p>
<p>1 5th, 2023, the group of intervenors represented by the</p> <p>2 Knoll Leibel LLC law firm filed a request for hearing.</p> <p>3 And on November 28th, 2023, the Public Service</p> <p>4 Commission issued a notice of hearing on the motion</p> <p>5 setting the hearing for today's date to hear oral</p> <p>6 arguments on the motion.</p> <p>7 I'm now going to ask the parties to state their</p> <p>8 appearance for the record.</p> <p>9 Mr. Bender or Mr. Dublinske, can you please</p> <p>10 state your appearance for the record today and indicate</p> <p>11 who you represent in this matter?</p> <p>12 MR. BENDER: Thank you, Your Honor and</p> <p>13 commissioners. Lawrence Bender, PO Box 1855, Bismarck,</p> <p>14 appearing on behalf of the Applicant.</p> <p>15 MR. DUBLINSKE: Thank you, Your Honor. Bret</p> <p>16 Dublinske, also with Fredrikson & Byron, on behalf of</p> <p>17 the Applicant.</p> <p>18 ALJ HOGAN: And it's my understanding, Mr.</p> <p>19 Dublinske, you're going to be arguing today?</p> <p>20 MR. DUBLINSKE: That is correct, Your Honor.</p> <p>21 ALJ HOGAN: All right. Thank you.</p> <p>22 Mr. Pelham, would you like to state your</p> <p>23 appearance for the record?</p> <p>24 MR. PELHAM: Good afternoon. Special Assistant</p> <p>25 Attorney General Zachary Pelham on behalf of the</p> <p>PAGE 6</p>	<p>1 to present oral argument with SCS Carbon Transport going</p> <p>2 first, followed by Emmons County, Burleigh County, the</p> <p>3 Bismarck intervenors, landowner intervenors, and</p> <p>4 Laborers Union.</p> <p>5 And I apologize, Mr. Pranis, I didn't mean to</p> <p>6 diminish your appearance. You weren't on my list for</p> <p>7 some reason. So you will go last, but can you please</p> <p>8 state your appearance for the record?</p> <p>9 MR. PRANIS: Thank you, Your Honor,</p> <p>10 Commissioners. Kevin Pranis on behalf of LIUNA</p> <p>11 Minnesota, North Dakota, otherwise known as Laborers</p> <p>12 District Council.</p> <p>13 ALJ HOGAN: Thank you.</p> <p>14 Following the 20-minute arguments by each party,</p> <p>15 I will allow Summit to provide a 10-minute reply</p> <p>16 argument if they wish to do that. I will be keeping</p> <p>17 time during each party's argument and I'll let you know</p> <p>18 when you've reached your allotted time and ask that you</p> <p>19 please wrap up your presentations. I will allow the</p> <p>20 commissioners to ask questions after each party's</p> <p>21 presentation and I will not count those questions or</p> <p>22 replies against your allotted time.</p> <p>23 Are there any other preliminary matters we need</p> <p>24 to discuss before we get started?</p> <p>25 Go ahead.</p> <p>PAGE 8</p>

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<p>1 COMMISSIONER CHRISTMANN: Just a message I 2 received from upstairs was that some of the attorneys 3 were hard to hear in this room. These mics, you have to 4 be pretty close to the mic so...</p> <p>5 ALJ HOGAN: All right. Thank you. 6 So then I'll turn to you, Mr. Dublinske, you can 7 start us off.</p> <p>8 MR. DUBLINSKE: Thank you, Your Honor, and good 9 afternoon. May it please the Commission, colleagues. 10 As I mentioned, I'm Bret Dublinske of Fredrikson & Byron 11 for SCS Carbon Transport who I'll refer to as "Summit" 12 this afternoon for short. Good to see you all again. 13 North Dakota as a matter of state policy is a 14 leader in the promotion of carbon capture and 15 sequestration. The State has invested significant 16 resources in being the first state to establish primacy 17 over Class VI carbon dioxide injection and storage 18 systems, but that policy is for naught if transmission 19 systems cannot be built to get the CO2 to where it will 20 be sequestered.</p> <p>21 As in many other states, the responsibilities 22 for decisions regarding pipeline permitting are granted 23 first and foremost to the expert administrative agency, 24 the Public Service Commission. The Commission is in the 25 best position to take a statewide view to apply its</p> <p>PAGE 9</p>	<p>1 briefing back and forth on this issue has appropriately 2 been a debate about the statutory interpretation of the 3 words of 49-22.1-13(2). Some of that debate has 4 involved questions of intent by taking isolated comments 5 from a handful of legislators and committee witnesses, 6 but at the end of the day, the best indicator of 7 legislative intent and what binds the Commission is the 8 language that was actually passed by majority vote and 9 signed into law.</p> <p>10 Looked at carefully, 49-22.1-13(2) is actually 11 pretty clear. Indeed it reads very much like a 12 flowchart for a decision. Summit would suggest that the 13 first three paragraphs, (a), (b), and (c), provide 14 substantive categories in how those are treated. And if 15 you look carefully at the language, they all have 16 important distinctions.</p> <p>17 So section 2, paragraph -- or subsection 2, 18 paragraph (a) pertains specifically to conversion 19 facilities, and it says that the commission's 20 certificate may not preempt a wide list of local 21 regulations including zoning. Paragraph (b), on the 22 other hand, pertains only to transmission facilities and 23 says that the commission's permit automatically preempts 24 a narrower list that includes land use and zoning 25 ordinances. Then there's a middle category in (c) where</p> <p>PAGE 11</p>
<p>1 unique and specific expertise regarding pipelines and 2 pipeline law and to render a decision.</p> <p>3 As the Commission is aware, two counties have, 4 in the last year, passed ordinances that they seek to 5 apply to the Summit pipeline project. These counties 6 have adopted standards and procedures that are different 7 from the State, different from the Federal Government, 8 and even different from each other, creating a 9 burdensome patchwork of various and overlapping 10 standards. This is not an efficient or an effective way 11 to promote state policy.</p> <p>12 Summit, however, believes that the plain 13 language of the North Dakota Century Code provides a 14 clear solution. Summit brought this renewed motion 15 regarding preemption because we believe that addressing, 16 and hopefully resolving, this issue upfront will make 17 the remainder of the proceeding more efficient as it 18 will either remove an evidentiary issue that would 19 otherwise require additional materials in the record or 20 it will guide what needs to be presented. But either 21 way, a ruling now helps avoid wasted efforts.</p> <p>22 That said, as I will explain momentarily, while 23 Summit does seek a ruling confirming its understanding 24 of this issue, Summit actually believes that the statute 25 makes preemption automatic. Overwhelmingly, the</p> <p>PAGE 10</p>	<p>1 the commission has discretion. It applies to 2 transmission facilities and it says that a commission 3 permit may preempt or may require the applicant to 4 comply with, and I'll quote paragraph (c) here, "the 5 road use agreements" subject to certain showings in that 6 paragraph.</p> <p>7 After those three categories, paragraphs (d) and 8 (e) are simply implementation, not new, substantive 9 categories. (D), again regarding transmission 10 facilities, requires that localities have to file local 11 requirements -- doesn't use the term "ordinance" -- ten 12 days in advance or they are preempted. And then 13 paragraph (e) says that the applicant must abide by the 14 local requirements that are not otherwise superseded by 15 the steps above. That is, they aren't automatically 16 superseded by paragraph (b) or they aren't 17 discretionarily superseded by a decision in 18 paragraph (c).</p> <p>19 This, as near as I can tell, is the only way to 20 read the statute that gives effect to all of the 21 separate paragraphs.</p> <p>22 Arguments from some of the parties appear to 23 start at the bottom of the list and work backwards and 24 say that paragraph (e) says that a transmission facility 25 must abide by local requirements, but that would read</p> <p>PAGE 12</p>

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<p>1 paragraph (b), the transmission permits preempt, out of 2 the statute entirely, which is an impermissible 3 interpretation. Similarly, arguments that all 4 preemption requires an affirmative decision of the 5 Commission based on the factors in paragraph (c) not 6 only reads paragraph (b) out but also ignores the 7 express limitation in paragraph (c) to road use 8 agreements.</p> <p>9 Summit's approach that paragraphs (a), (b), and 10 (c) set forth three substantive categories and their 11 status, not preempted, always preempted, sometimes 12 preempted, and that (d) and (e) are about implementation 13 makes logical sense of the whole of section -- 14 subsection 2 read together.</p> <p>15 And that structure makes logical sense as well 16 because conversion facilities, a gas plant, for example, 17 is at a single site that is usually in one county where 18 it has impacts, but linear infrastructure like a 19 pipeline is often in multiple counties and it needs to 20 be viewed as a whole across the entire route. They are 21 different projects of a different nature, and it makes 22 sense that the Legislature would treat them differently 23 as the language of paragraphs (a) and (b) do.</p> <p>24 Because the words on the page are clear and 25 there is no ambiguity, diving into the legislative</p> <p>PAGE 13</p>	<p>1 Commission disagrees, that helps steer the hearing and 2 the evidentiary issue can be wrapped into the rest of 3 the case and the evidence presented on reconsideration. 4 Second, that said, even applying the factors, Summit 5 believes the board can rule now on that basis.</p> <p>6 The unreasonableness is clear on the face of the 7 ordinances as is the conflict with federal law. In 8 Emmons County, for example, they adopted a nearly 9 8,000-foot setback from occupied structures compared to 10 500 feet as a state standard, 16 times larger. Summit 11 believes that the Commission can find that unreasonably 12 restrictive on its face.</p> <p>13 Burleigh County is even more extreme; two miles 14 from an occupied structure, approximately 20 times the 15 state standard. And Burleigh also has a setback, 16 interestingly enough, of 10 miles from any electric 17 transmission line. Setbacks of that length are, on 18 their face, an unreasonable restriction and obviously 19 block out huge amounts of the county.</p> <p>20 And there are other setbacks beyond just those 21 one or two that are equally excessive and they all 22 combine to have a cumulative impact. The maps in our 23 briefs merely demonstrate that fact. And the fact that 24 those ordinances were adopted well after Summit's 25 project was underway, changing the rules well into</p> <p>PAGE 15</p>
<p>1 history is not needed or appropriate. And in any event, 2 you can find isolated snippets on either side. But the 3 one thing that I would say about legislative history 4 that I think is clear is that the legislators were told 5 most bluntly by then Representative Keiser that the 6 amendments could be interpreted just as Summit suggests 7 and the Legislature passed that language knowing it. 8 Read into that what you will.</p> <p>9 In the alternative, however, even the parties 10 that disagree with the automatic preemption 11 interpretation all appear to argue that, at worst for 12 Summit, the Commission may preempt by applying the 13 factors in paragraph (c). And we disagree with that.</p> <p>14 Let me run through that analysis as well. The 15 standards in paragraph (c) include whether the 16 regulations are, quote, "unreasonably restrictive" and 17 whether they, quote, "conflict with state or federal 18 law." Much of the resistance here is boiled down to a 19 claim that Summit hadn't entered enough evidence on 20 those factors.</p> <p>21 Summit has two responses to that. First, 22 Summit's primary position remains that the plain 23 legislative language makes the preemption automatic with 24 regard to transmission facilities and zoning ordinances, 25 but the point of filing the motion now is that if the</p> <p>PAGE 14</p>	<p>1 design and engineering, only adds to the unreasonable 2 burden.</p> <p>3 Paragraph 49-22.1-13(2)(c) also makes clear that 4 conflict with other laws is a basis for preemption. 5 Burleigh County's ordinance, for example, repeatedly and 6 several times in the Purposes section alone states its 7 purpose as being safety. It talks about blast zones or 8 fatality zones which, again, makes clear its purpose is 9 to engage in safety regulation which, by express 10 language in federal law and also controlling Eighth 11 Circuit precedent, is preempted. The Burleigh ordinance 12 establishes its own definition of "high consequence 13 area," a term of art in federal PHMSA regulations that 14 has a different definition there. At Section 7.2 it 15 even purports to regulate the spacing on shut-off valves 16 and fracture arresters which are subjects of specific 17 and explicit PHMSA regulations.</p> <p>18 But the setbacks, especially ones the unusual 19 length of those in Emmons and Burleigh ordinances, also 20 serve no purpose other than to regulate safety and/or to 21 block the project. In the supplemental authority case 22 that Summit filed from a federal court in Iowa, that 23 judge, implementing a series of Eighth Circuit 24 precedence, found that setbacks much smaller than those 25 at issue here were a proxy for safety regulations and</p> <p>PAGE 16</p>

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<p>1 found them preempted by federal law.</p> <p>2 Moreover, to the extent those setbacks serve, or</p> <p>3 as the quotes from local officials that we included in</p> <p>4 our reply brief show, are intended to prevent the</p> <p>5 project, that also conflicts with state law and state</p> <p>6 policy which is designed to balance the interests the</p> <p>7 State has in infrastructure investments with other</p> <p>8 concerns. That is, the state law is intended to allow,</p> <p>9 subject to reasonable regulations, not to prohibit,</p> <p>10 pipelines, including carbon dioxide pipelines. To the</p> <p>11 extent that local ordinance have the intent or the</p> <p>12 effect of prohibiting carbon dioxide pipelines in that</p> <p>13 county, that also is conflict with state law.</p> <p>14 Your Honor, Summit has a good route in North</p> <p>15 Dakota that has now reached 80 percent voluntary</p> <p>16 easements and climbing. Summit has heard and responded</p> <p>17 to concerns about the proximity to Bismarck. And this</p> <p>18 Commission should not allow a handful of opponents in</p> <p>19 local governments to undermine the state policy or to</p> <p>20 serve as a veto on a project that landowners on the</p> <p>21 route, agricultural interests and others, support and</p> <p>22 which will provide investment and jobs for the state.</p> <p>23 Century Code 49-22.1-13(2) provides a clear path</p> <p>24 for the expert Public Service Commission to manage</p> <p>25 siting of transmission projects like pipelines and to</p> <p>PAGE 17</p>	<p>1 MR. BRAATEN: Thank you, Judge Hogan.</p> <p>2 I'd like to start by talking a little bit about</p> <p>3 the Emmons County ordinance specifically, and I also</p> <p>4 intend to spend some time discussing this issue of</p> <p>5 statutory interpretation and spending a little time with</p> <p>6 the statute itself.</p> <p>7 But I want to first talk about the Emmons County</p> <p>8 ordinance, because when we're talking about supersession</p> <p>9 and preemption, and specifically if we're going to talk</p> <p>10 about conflict of laws, that is something that can only</p> <p>11 be analyzed with respect to the actual language of the</p> <p>12 actual local ordinance at issue. And a lot of the</p> <p>13 arguments that have been made by Summit tend to attempt</p> <p>14 to sweep up the Emmons County ordinance along with</p> <p>15 numerous comments about other ordinances.</p> <p>16 And so I want to take a little time to point out</p> <p>17 the unique nature of the Emmons County ordinance as well</p> <p>18 as the fact that it's an ordinance that's been on the</p> <p>19 books in Emmons County since the 1980s. And this is</p> <p>20 particularly important because, as the Commission saw,</p> <p>21 Summit filed a federal court decision out of Iowa and</p> <p>22 that decision relates to conflict of laws.</p> <p>23 And I want to talk a little bit about the PHMSA</p> <p>24 guidance letter that was sent out that contradicts some</p> <p>25 of what was in that opinion, but, more importantly, that</p> <p>PAGE 19</p>
<p>1 avoid the kind of jigsaw puzzle approach of different</p> <p>2 rules and processes for different parts of the single</p> <p>3 pipeline.</p> <p>4 Again, the recent federal decision from Iowa,</p> <p>5 the court discusses the policy reasons for statewide</p> <p>6 rather than county-by-county siting. And while it's not</p> <p>7 directly applying North Dakota law, it does support the</p> <p>8 sort of distinction that the language in the legislation</p> <p>9 used, language that clearly provides that a permit for a</p> <p>10 liquid transmission facility preempts local land use</p> <p>11 regulations.</p> <p>12 Summit respectfully asks the Commission to find</p> <p>13 the Burleigh and Emmons County ordinances preempted or</p> <p>14 that they will be preempted by a permit if this</p> <p>15 Commission grants one as the -- to the extent that they</p> <p>16 purport to apply to this project and to treat this</p> <p>17 multi-county pipeline as a unified, uniform state issue.</p> <p>18 Thank you. I'd be happy to answer any</p> <p>19 questions.</p> <p>20 ALJ HOGAN: All right. Thank you.</p> <p>21 Are there any questions from commissioners or</p> <p>22 Mr. Dawson?</p> <p>23 All right. No questions.</p> <p>24 All right. Then the next party on my list is</p> <p>25 Emmons County. So you may proceed, Mr. Braaten.</p> <p>PAGE 18</p>	<p>1 opinion is really specific to and the analysis is based</p> <p>2 upon what happened in that particular county in Iowa.</p> <p>3 And that is a different analysis than what happened in</p> <p>4 Emmons County, North Dakota.</p> <p>5 So the Emmons County ordinance regulates land</p> <p>6 uses in the county and it was amended after the siting</p> <p>7 application, but one of the things that I handed out to</p> <p>8 folks is just a couple pages out of the prior Emmons</p> <p>9 County ordinance. And this is Article VI, subdivision</p> <p>10 B, and you can look down to (2)(a) and (2)(b) and that</p> <p>11 governs. And the amendment that was made in the Emmons</p> <p>12 County ordinance was made to specifically an existing</p> <p>13 provision at B(2)(b)(i). And there were setbacks.</p> <p>14 And what I want to point out specifically and</p> <p>15 importantly is that at the top of this page, prior to</p> <p>16 Emmons County amending its ordinance to bring CO2</p> <p>17 companies within its purview, it already regulated</p> <p>18 pipelines. And it regulated electric transmission</p> <p>19 facilities as well as transmission pipelines for water,</p> <p>20 gas, oil, or coal slurry.</p> <p>21 And so this wasn't a situation where Emmons</p> <p>22 County developed a new ordinance specifically related to</p> <p>23 pipelines as a land use in their county. They simply,</p> <p>24 for the first time ever, saw a pipeline coming through</p> <p>25 that was going to ship CO2. That's not something that</p> <p>PAGE 20</p>

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<p>1 we had seen before. Just like at some point in this</p> <p>2 country no one had heard about the idea of a coal slurry</p> <p>3 pipeline, but once we heard about the idea of coal</p> <p>4 slurry pipelines, local governments added those to the</p> <p>5 other pipelines they regulate.</p> <p>6 Similarly, when Emmons County found out that</p> <p>7 there was going to be a CO2 pipeline coming through,</p> <p>8 they thought it prudent to regulate that the way they</p> <p>9 regulate other pipelines. They didn't know the route.</p> <p>10 What they did is look at their ordinance, what already</p> <p>11 existed on the books there to regulate that land use,</p> <p>12 and they added a new land use being developed into the</p> <p>13 existing land uses being regulated for that purpose.</p> <p>14 Significantly, what they amended is in</p> <p>15 Article VI. Article VI regulates four different land</p> <p>16 uses. One of them is the pipelines and transmission</p> <p>17 facilities I mentioned. And you don't have this in</p> <p>18 front of you, but the other land uses regulated in</p> <p>19 Article VI are commercial recreation parks, tourist and</p> <p>20 trailer camps, salvage and junkyards, and subsurface</p> <p>21 mining and surface extraction.</p> <p>22 And my point with that is simply that this is</p> <p>23 merely one of four different land uses being regulated</p> <p>24 under the Emmons County ordinance since the 1980s. And</p> <p>25 so the idea that this was some sort of a safety</p> <p>PAGE 21</p>	<p>1 government and local control, and it specifically</p> <p>2 referred to local governments have implemented</p> <p>3 authorities and they've seen localities consider various</p> <p>4 measures. One of them is restricting land use and</p> <p>5 development along pipeline rights of way through zoning</p> <p>6 setbacks and similar measures. That's PHMSA saying that</p> <p>7 they recognize that local governments exercise that</p> <p>8 jurisdiction. And that's precisely what Emmons County</p> <p>9 did here.</p> <p>10 PHMSA's letter to Summit also states "Local</p> <p>11 governments have traditionally exercised broad powers to</p> <p>12 regulate land use, including setback distances and</p> <p>13 property development that includes development in the</p> <p>14 vicinity of pipelines. Nothing in the federal pipeline</p> <p>15 safety law impinges on these traditional prerogatives of</p> <p>16 local or state government, so long as officials do not</p> <p>17 attempt to regulate the field of pipeline safety</p> <p>18 preempted by federal law."</p> <p>19 There's nothing about regulating pipeline safety</p> <p>20 in the Emmons County ordinance. And if you go through</p> <p>21 the briefing, what you'll see is all the comments about</p> <p>22 that refer to Burleigh County and then attempt to simply</p> <p>23 sweep up Emmons County with it. The Emmons County</p> <p>24 ordinance doesn't regulate safety. It is a land use</p> <p>25 regulation which even PHMSA has recognized is</p> <p>PAGE 23</p>
<p>1 regulation passed and targeted at Summit is simply</p> <p>2 wrong. This has been on the books. And they are still</p> <p>3 regulating oil and gas lines and transmission lines the</p> <p>4 same way Summit's being regulated.</p> <p>5 The other thing I want to say about the Emmons</p> <p>6 County ordinance is that they have a process set up</p> <p>7 where you can get waivers. And so Summit could go to</p> <p>8 anyone who is within that -- that established residence</p> <p>9 setback and ask for a waiver. And if they have setbacks</p> <p>10 that are preventing them from going down the current</p> <p>11 route, they could simply ask for setbacks to that.</p> <p>12 And Commissioner Magrum is here and he can</p> <p>13 testify. He obviously doesn't know everything that</p> <p>14 happens in his county, but he hasn't heard of Summit</p> <p>15 asking for any setbacks in that county -- or setback</p> <p>16 waivers.</p> <p>17 But my point is that there is a process even if</p> <p>18 one of these setbacks poses a problem for the current</p> <p>19 route. There's actually a process where they can go out</p> <p>20 and attempt to work with those landowners to get</p> <p>21 through. And we're not aware of them having even</p> <p>22 attempted to do that.</p> <p>23 The other thing I want to point out is that it</p> <p>24 was filed with the Commission that there was a letter</p> <p>25 that was sent out by PHMSA that talked about local</p> <p>PAGE 22</p>	<p>1 specifically the prerogative of local governments.</p> <p>2 The other issue I want to talk a little bit</p> <p>3 about is the statutory interpretation. And I think you</p> <p>4 probably have several copies at this point, but because</p> <p>5 we are talking about a fairly wordy and verbose statute,</p> <p>6 I thought it would be helpful to have the language in</p> <p>7 front of you as I refer to it. But what I want to do is</p> <p>8 walk briefly through some of that language and explain</p> <p>9 why we disagree with the statutory interpretation and a</p> <p>10 plain language reading of the statute itself.</p> <p>11 And so there was an argument from Summit in</p> <p>12 which it said that the word "requirements" in subsection</p> <p>13 2(c) of 49-22.1-13 is a reference to the road use</p> <p>14 agreements and that's the argument they're making.</p> <p>15 And so if you look at the language in</p> <p>16 subdivision 2(c), in the second sentence it says "A</p> <p>17 permit may supersede and preempt the requirements of a</p> <p>18 political subdivision." And their claim is that that</p> <p>19 refers to the prior sentence where it says "road use</p> <p>20 agreements." That's wrong.</p> <p>21 If you read the rest of that sentence, it says</p> <p>22 "A permit may supersede and preempt the requirements of</p> <p>23 a political subdivision if the applicant shows by a</p> <p>24 preponderance of the evidence the regulations and</p> <p>25 ordinances are unreasonably restrictive."</p> <p>PAGE 24</p>

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<p>1 My point is that "requirements" is synonymous</p> <p>2 with regulations and ordinances. They are in the same</p> <p>3 sentence and they are referring to the same thing.</p> <p>4 "Requirements" does not refer to road use agreements.</p> <p>5 It refers to regulations and ordinances. What</p> <p>6 regulations? The zoning regulations referred to in</p> <p>7 subdivision b.</p> <p>8 Summit says that if there is no automatic</p> <p>9 preemption, then subdivision b is superfluous. Again,</p> <p>10 that's wrong by its plain language.</p> <p>11 When you look at subdivision b, it starts with</p> <p>12 the words "Except as provided in this section."</p> <p>13 "Section" refers to 49-22.1-13 of the Century Code.</p> <p>14 That subdivision b is literally referring to the</p> <p>15 remainder of the section, indicating that you have to</p> <p>16 look elsewhere in that section to fully understand what</p> <p>17 that subdivision means because it's saying it may be</p> <p>18 superseded except as provided in this section.</p> <p>19 "As provided in this section" refers to the</p> <p>20 language in subdivision c that then explains how, why,</p> <p>21 and when a local regulation or ordinance can be</p> <p>22 superseded. Again, regulation or ordinance does not</p> <p>23 refer to a road use agreement. That very clearly refers</p> <p>24 to local zoning regulations and ordinances. And so they</p> <p>25 do need to make a showing by a preponderance of the</p> <p>PAGE 25</p>	<p>1 make explicit that they're having their ordinance</p> <p>2 superseded? That doesn't make any sense. It doesn't</p> <p>3 make sense that you would say that they are</p> <p>4 automatically superseded and preempted if you don't get</p> <p>5 them filed if they're automatically superseded and</p> <p>6 preempted anyway. That's not how statutory</p> <p>7 interpretation works.</p> <p>8 So the arguments made by Summit with respect to</p> <p>9 the plain language, I do agree that the legislative</p> <p>10 history is, at best, ambiguous and supports what both</p> <p>11 sides are saying depending on which part of it you want</p> <p>12 to quote. And that is often the case with legislative</p> <p>13 history. But we don't need to look at the legislative</p> <p>14 history. We have the language of the statute and we can</p> <p>15 interpret. And the canons' interpretation say that we</p> <p>16 give the words their plain and ordinary meaning. We</p> <p>17 have to interpret these provisions together so that they</p> <p>18 make sense together.</p> <p>19 And we have to interpret them to avoid an</p> <p>20 absurdity. It would be indeed absurd to require local</p> <p>21 governments to file ordinances that are automatically</p> <p>22 superseded by a permit. And it would also be absurd to</p> <p>23 say that if you don't get them filed by ten days before</p> <p>24 the hearing, we're going to automatically supersede them</p> <p>25 even though we already automatically supersede them.</p> <p>PAGE 27</p>
<p>1 evidence.</p> <p>2 Now, moving on, the other language in (d) and</p> <p>3 (d) -- (d) and (e) further supports this. And</p> <p>4 specifically if you look at subdivision (d), the last</p> <p>5 two sentences, it says "Upon notification, a political</p> <p>6 subdivision shall provide a listing to the commission of</p> <p>7 all local requirements identified under this</p> <p>8 subsection."</p> <p>9 Again, requirements are the local zoning</p> <p>10 ordinance, not the road use agreement. So they provide</p> <p>11 their local requirements.</p> <p>12 And it states "The requirements must be filed at</p> <p>13 least ten days before the hearing or the requirements</p> <p>14 are superseded and preempted." Well, if they're</p> <p>15 automatically superseded and preempted under</p> <p>16 subdivision b, then why are they being automatically</p> <p>17 superseded and preempted if you don't file them ten days</p> <p>18 before the hearing? That, again, would be superfluous.</p> <p>19 The answer is that subdivision b doesn't create</p> <p>20 an automatic preemption, because that would make</p> <p>21 subdivision d absurd. That would mean the only reason</p> <p>22 these local governments are filing their ordinances is</p> <p>23 to make sure we all know exactly what's being</p> <p>24 superseded. What possible incentive would they have to</p> <p>25 be filing them if the only effect of filing them is to</p> <p>PAGE 26</p>	<p>1 That simply doesn't make sense.</p> <p>2 The bottom line here as well is that, thus far,</p> <p>3 Summit has not produced or proffered or submitted the</p> <p>4 evidence required for the PSC to make a finding on this</p> <p>5 issue. They have an evidentiary burden of proof. They</p> <p>6 have to prove by a preponderance of the evidence that</p> <p>7 it's unreasonably restrictive. They have to show</p> <p>8 there's a conflict. They have to show one of these</p> <p>9 things and that has to be in the findings of the</p> <p>10 Commission. And if it's not, then the Commission's</p> <p>11 order would be reversible.</p> <p>12 Without an evidentiary hearing and without a</p> <p>13 significant amount of evidence that is right now lacking</p> <p>14 in the record, the Commission simply doesn't have the</p> <p>15 evidence necessary in order to make a finding to</p> <p>16 supersede a local ordinance. And it specifically</p> <p>17 doesn't have any evidence in the record to supersede the</p> <p>18 Emmons County ordinance.</p> <p>19 And as I have shown and explained, there's no</p> <p>20 conflict between the Emmons County ordinance and any</p> <p>21 state or federal law. So, with that, we would ask for</p> <p>22 the Commission to require Summit, in any event, to put</p> <p>23 on evidence first if it wants ordinance superseded.</p> <p>24 Now we're not going to agree that our ordinance</p> <p>25 is unreasonably restrictive. Summit has submitted a map</p> <p>PAGE 28</p>

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<p>1 with no foundation indicating that it can't get through. 2 Number one, we don't agree with everything that appears 3 to be on that map and there's no foundation as to how 4 that map was created and that's not competent evidence. 5 Even if that map were accurate, which, again, we don't 6 agree it is, even if it were, they haven't attempted to 7 get any waivers to get through, which is a way they can 8 get through. So, again, it's not stopping them. 9 They're simply not trying to get through. 10 So, with that, the Emmons County ordinance is a 11 unique ordinance that has not been analyzed. Summit has 12 not proffered evidence. There's not evidence in the 13 record sufficient for the finding required in order to 14 supersede the local ordinance. And so we would ask you 15 to deny Summit's motion on this issue. 16 With that, I would stand for any questions. 17 Thank you. 18 ALJ HOGAN: Thank you. 19 Are there any questions from the commissioners 20 or Mr. Dawson? 21 COMMISSIONER CHRISTMANN: Yes, Your Honor. 22 I've seen this one page before that you handed 23 out just earlier. So am I understanding you right, the 24 previous ordinance from the '80s having to do with 25 pipelines had a 200-foot setback from occupied</p> <p>PAGE 29</p>	<p>1 MR. BRAATEN: I won't say that I think that 2 would be illogical. I think that it would be contrary 3 to the plain language of the statute if you read it 4 together, and particularly when they use "requirements," 5 they use that synonymously with words like "regulations 6 or ordinances." 7 There's only one place in this entire statute 8 that refers to road use agreements. And what I would 9 say is that that makes it clear that the Legislature 10 knows very well how to refer to road use agreements, and 11 if that's what they meant, they would have just said 12 road use agreements. When they're talking about 13 ordinances and regulations, I think it's clear from the 14 language what they're referring to is zoning ordinances 15 and zoning regulations. 16 And, therefore, I don't -- again, I'm not saying 17 what you stated, Commissioner Christmann, was illogical, 18 but I don't think it complies with the canons of 19 interpretation and I don't think that it's a fair 20 reading of the plain language of this statute. 21 COMMISSIONER CHRISTMANN: Okay. And my last 22 question, how do you explain -- and correct me if I'm 23 wrong here, but my understanding of this whole section 24 of law is that sections b and c, until, I think, 2019, 25 give or take one session, were actually one section with</p> <p>PAGE 31</p>
<p>1 structures and then was the -- the previous attorney 2 correct when he said that it's currently gone from 200 3 feet to 8,000 feet? 4 MR. BRAATEN: It went from 200 feet for a 5 building -- and the current actually splits that out. 6 So there are established residences that have a setback, 7 corporate boundaries of organized city, and then it's 8 500 feet for any other building or surface water body. 9 So that 200 for any building was split up 10 further and the more significant setback is for an 11 established residence, but then for simply a building, 12 which is what the prior ordinance said was 200 feet, 13 that was increased to 500 feet. 14 COMMISSIONER CHRISTMANN: Okay. And then -- I'm 15 not quoting you, but I understood you to say that the 16 way Summit is arguing, there would be no logic to the 17 requirement that the local government turn in their 18 ordinances ten days in advance if things are 19 automatically superseded. 20 But would it be illogical to read that to mean 21 that they need to be turned in ten days in advance so 22 that the commission could determine if, among those 23 ordinances, there are road use agreements and then 24 whether those are or not unreasonably restrictive 25 because of section c?</p> <p>PAGE 30</p>	<p>1 some language that's been removed, some new language 2 added in, but previously the whole thing was combined 3 and it said that the commission's permit may supersede 4 or preempt. 5 What's your theory on why did the Legislature 6 change that to say that we preempt and supersede on part 7 of it and then create another section about road use 8 agreements and there say that we may if they're 9 unreasonably restrictive? 10 MR. BRAATEN: Thank you, Commissioner 11 Christmann. 12 And what I would say is I don't think that 13 subsection c is a subsection just on road agreements. I 14 think it refers to road agreements. 15 With respect to the fact that the Legislature 16 went through a legislative process and made those 17 changes, I have two answers. The short, flippant answer 18 is that it's a sausage factory. 19 Putting that aside, my serious answer about it, 20 however, is that if you look at that legislative 21 history, what you see is that there was an intent to try 22 and change the statute and there were also a lot of 23 legislators who said that "We believe local control is 24 critical and extremely important." And this is the 25 language we ended up with when those two forces met and</p> <p>PAGE 32</p>

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<p>1 when those different sides started arguing at the 2 Legislature.</p> <p>3 And as attorneys and as a body here, our 4 obligation is not to speculate about why they would have 5 done that or didn't do it. Our obligation is to look at 6 the language in the statute and interpret it.</p> <p>7 And so my argument and my point is that, putting 8 aside why the Legislature did what they did, I think 9 that's the danger in looking at legislative history when 10 the language itself is not ambiguous. And so that's why 11 I agree with Summit that we don't want to be looking at 12 that legislative history because I think that both sides 13 can make some pretty good arguments from various 14 comments they find in that legislative history, but, 15 ultimately, what a court is going to do and what our 16 obligation is, is to interpret the language in front of 17 us.</p> <p>18 COMMISSIONER CHRISTMANN: Thank you. No other 19 questions.</p> <p>20 COMMISSIONER HAUGEN-HOFFART: No questions.</p> <p>21 ALJ HOGAN: All right. Thank you.</p> <p>22 The next party on my list is Burleigh County so 23 you can proceed, Ms. Lawyer.</p> <p>24 MS. LAWYER: Thank you, Judge Hogan, 25 Commissioners. I'm Julie Lawyer, representing Burleigh</p> <p>PAGE 33</p>	<p>1 The second ordinance that they reference would 2 be the one that they designate, I believe, as the 3 March 30th ordinance. That one is a zoning ordinance 4 within Burleigh County.</p> <p>5 Burleigh County does not have zoning authority 6 through every township within the county. Some 7 townships retain their own zoning ordinance authority. 8 And so there was a map that was attached to our petition 9 to intervene as Exhibit 2 which shows which townships 10 are subject to the Burleigh County zoning authority.</p> <p>11 So with that zoning ordinance that was passed in 12 Burleigh County, there are multiple townships where that 13 zoning ordinance does not apply. They would have to 14 adopt their own. So there is still a pathway through 15 Burleigh County outside of the Burleigh County zoning 16 ordinance where Summit could reroute their pipeline.</p> <p>17 When we're talking about 49-22.1-13 of the North 18 Dakota Century Code and talking about superseding and 19 preempting local zoning ordinances, it's important to 20 note that that statute talks about issuance of a 21 certificate and issuance of a permit. Those are two 22 different things. And those are defined in the 23 beginning of the statute as well under 49-22.1-01.</p> <p>24 A "certificate" means a certificate of site 25 compatibility or the certificate of corridor</p> <p>PAGE 35</p>
<p>1 County.</p> <p>2 We're talking about two different ordinances in 3 Burleigh County that were brought up in the original 4 motion by Summit when they talked about superseding the 5 Burleigh County ordinances. The first ordinance, which 6 they identify as the March 6th ordinance, was a 7 countywide ordinance adopted under the county's Home 8 Rule Charter, and that ordinance dealt with basically 9 sharing of information from a pipeline company to 10 provide safety information to the county so that the 11 county would be able to train and have first responders 12 able to take care of any emergency that arose.</p> <p>13 That ordinance, again, doesn't regulate the 14 safety of the pipeline or the company, but what it does 15 is it actually puts forth for them to share with the 16 county an emergency action plan, an emergency response 17 and hazard mitigation plan, and safety procedures and 18 protocol of the pipeline company so that our first 19 responders would have that information, our emergency 20 management department would have that information, so if 21 an emergency did occur, again, we would have the proper 22 training and planning to be able to handle that 23 emergency. That is a countywide ordinance, again, under 24 the Home Rule Charter and would apply throughout the 25 entire county.</p> <p>PAGE 34</p>	<p>1 compatibility issued under this chapter. A permit is 2 different. The permit, under subsection 8, is a permit 3 for construction of the gas or liquid transmission 4 facility within the designated corridor.</p> <p>5 So we're talking about two things. The 6 certificate basically approves of the location of the 7 pipeline. The permit allows them to build then the 8 pipeline at that location that was approved.</p> <p>9 So when you're looking, again, at 49-22.1-13, 10 under subsection 2, 2(b) indicates "Except as provided 11 in this section, a permit for the construction of a gas 12 or liquid transmission facility within a designated 13 corridor supersedes and preempts any local land use or 14 zoning regulations."</p> <p>15 We're getting ahead of ourselves there because 16 we're not talking about a permit to construct the 17 pipeline at this point. We're talking about designating 18 that corridor or giving that site compatibility 19 certificate to give them the location that they can 20 build it.</p> <p>21 So we have to look at where we're issuing a 22 certificate, and that would be under 2(d). "When the 23 application for a certificate for a gas or liquid 24 transmission facility is filed, the commission shall 25 notify the townships with retained zoning authority,</p> <p>PAGE 36</p>

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<p>1 cities, and counties in which part of the proposed 2 corridor is located."</p> <p>3 And it's at that point that those governmental 4 agencies are required to file, ten days before the 5 hearing, their requirements, which are their ordinances 6 or their zoning regulations. And it's at that point 7 that, if they don't file it within the timeline, then 8 those zoning regulations are superseded or preempted 9 automatically for the certificate for site 10 compatibility, or the corridor in this case.</p> <p>11 We're not -- then when we look at subsection e, 12 "An applicant shall comply with the local requirements 13 provided to the commission pursuant to subdivision d, 14 which are not otherwise superseded by the commission."</p> <p>15 That seems to imply that once those regulations 16 or ordinances are submitted to the commission when 17 considering that corridor, then the commission can 18 determine whether or not those -- those ordinances can 19 be superseded. There isn't really a guideline as to how 20 or when they can be superseded.</p> <p>21 2(c) deals again where it does talk about that 22 the applicant has to show by a preponderance of the 23 evidence how the regulations and ordinances are 24 unreasonably restrictive. But, again, 2(c) is talking 25 about, before the facility is approved, the commission</p> <p>PAGE 37</p>	<p>1 setbacks that are imposed by the Burleigh County zoning 2 ordinance relates to the safety of the pipeline, but 3 that's not the case.</p> <p>4 If you look at the -- especially the letter that 5 was sent out by PHMSA, the Pipeline and Hazardous 6 Materials Safety Administration, they specifically 7 indicate that their authority, their federal 8 regulations, their authority, is for the safety and 9 construction of the pipeline. They don't deal with 10 zoning regulations. They don't deal with setbacks. 11 That's left up to the individual local authorities.</p> <p>12 The only thing within the Burleigh County zoning 13 ordinance that could be -- that could maybe be construed 14 as being or falling within the parameters of PHMSA would 15 be on the March 30th -- or March 30th ordinance, which 16 is the zoning ordinance, under section 8 subsection 5, 17 where it talks about the valves and the placement of the 18 valves and the spacing in between those. That may fall 19 or may be deemed to fall within the parameters of PHMSA, 20 but the remaining ordinance is all within the zoning 21 authority of the Burleigh County Commission.</p> <p>22 And even if this Commission would deem that that 23 subsection does fall within the federal regulations and 24 it's incompatible with the federal regulations of PHMSA, 25 the remaining portions of the ordinance are still within</p> <p>PAGE 39</p>
<p>1 shall require the applicant to comply with the road use 2 agreements of the impacted political subdivision. And 3 then a permit may supersede and permit the requirements 4 of the political subdivision if the applicant shows by 5 the preponderance of the evidence that the regulations 6 are unreasonably restrictive, the cost factors, and all 7 those other things.</p> <p>8 Again, we're talking about the permit for 9 construction there. We're not talking about site 10 compatibility.</p> <p>11 In this situation, too, the county -- when we 12 adopted our zoning ordinance, that was after the 13 application was submitted to the Commission. However, 14 the zoning ordinance that we have applies to all 15 hazardous liquid pipelines. There's nothing specific 16 regarding carbon dioxide pipelines within that zoning 17 ordinance. So that zoning ordinance is not meant to 18 restrict just carbon dioxide pipelines. It's all 19 hazardous liquid pipelines.</p> <p>20 There's nothing in the first ordinance regarding 21 the sharing of information so that the county has those 22 hazard mitigation plans, the safety procedures and 23 protocols, and the emergency action plan that actually 24 regulates the safety of a pipeline.</p> <p>25 I know that Summit has been arguing that the</p> <p>PAGE 38</p>	<p>1 the zoning authority of the Burleigh County Commission 2 and don't need to be superseded.</p> <p>3 Because we're talking about a site compatibility 4 application at this time and not a permit to build, 5 there is no automatic superseding of the land use or 6 zoning regulations of the local entities until we get to 7 that point.</p> <p>8 It's Burleigh County's position that this 9 Commission needs to be looking at the local ordinances 10 and the zoning ordinances and issuing a permit for site 11 compatibility or site corridor based upon those local 12 zoning regulations and take those into consideration 13 when deciding whether or not this site is the 14 appropriate site for this pipeline.</p> <p>15 And that's my argument, unless there are any 16 questions.</p> <p>17 ALJ HOGAN: All right. Thank you.</p> <p>18 Are there any questions from the commissioners 19 or Mr. Dawson?</p> <p>20 Go ahead.</p> <p>21 COMMISSIONER CHRISTMANN: Ms. Lawyer, the 22 ordinance that I have -- I don't know which of the two 23 it is -- is as you referred to them. It says Ordinance 24 23-003. It was -- it was in our Docket No. 206.</p> <p>25 But I thought you just said that it is not about</p> <p>PAGE 40</p>

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<p>1 safety, but I see safety mentioned in here several</p> <p>2 times. So how do you bring that together?</p> <p>3 MS. LAWYER: It doesn't regulate the safety of</p> <p>4 the pipeline. It doesn't say how they have to build the</p> <p>5 pipeline to keep it safe. It does deal with the safety</p> <p>6 of the community. We want to be able to respond to any</p> <p>7 emergency that happens. And so we want to know what</p> <p>8 their safety plan is, their protocol, so that we can</p> <p>9 prepare for that. That's all that that ordinance is.</p> <p>10 And that's the one that's referred to by Summit</p> <p>11 as the March 6th ordinance. And so that would be the</p> <p>12 countywide ordinance under Home Rule Charter. And that</p> <p>13 is regarding the safety of the community, but just so</p> <p>14 that we can respond to any emergency requirements. It</p> <p>15 doesn't require Summit to do anything with their</p> <p>16 pipeline or build it in any particular place. It just</p> <p>17 requires them to share that information with the county</p> <p>18 so that we can be prepared in the event of an emergency.</p> <p>19 COMMISSIONER CHRISTMANN: Okay. And did you get</p> <p>20 a chance to see the Summit -- the Story County judge's</p> <p>21 decision that was docketed in this case a couple days</p> <p>22 ago?</p> <p>23 MS. LAWYER: I did, Your Honor.</p> <p>24 COMMISSIONER CHRISTMANN: Okay. And I think I</p> <p>25 just heard you say that PHMSA said that they don't deal</p> <p>PAGE 41</p>	<p>1 MS. LAWYER: I believe it's ten miles -- no.</p> <p>2 COMMISSIONER CHRISTMANN: That's from cities.</p> <p>3 MS. LAWYER: Ten miles from transmission -- let</p> <p>4 me look real quick.</p> <p>5 COMMISSIONER CHRISTMANN: I have it here too</p> <p>6 somewhere. Two miles.</p> <p>7 So if a resident that is opposed to this</p> <p>8 project, let's say they live right inside the section</p> <p>9 line of one of the townships that are covered and this</p> <p>10 pipeline is proposed to be just in the next township.</p> <p>11 Does that mean that your ordinance does not cover it</p> <p>12 because the pipeline is out? Or do you cover two miles</p> <p>13 from everyone in one of your townships that your</p> <p>14 ordinance covers?</p> <p>15 MS. LAWYER: So the ordinance would cover up to</p> <p>16 that township line. That would be the border for it.</p> <p>17 So in a case like that where it's just over the township</p> <p>18 section, it would cover the two miles that are within</p> <p>19 the township that's covered by the zoning ordinance, but</p> <p>20 it would only cover to the township boundary for the</p> <p>21 next township that it does not apply to.</p> <p>22 COMMISSIONER CHRISTMANN: If you live near the</p> <p>23 edge of that township, you might have two miles of</p> <p>24 coverage on one side and 50 feet on the other?</p> <p>25 MS. LAWYER: Correct.</p> <p>PAGE 43</p>
<p>1 with setbacks, but how do I merge that with the judge's</p> <p>2 statement that state authority may not adopt safety</p> <p>3 standards for pipeline facilities?</p> <p>4 MS. LAWYER: The setbacks, I don't believe those</p> <p>5 are safety standards for the actual facility. There are</p> <p>6 two different things we're talking about here. One is</p> <p>7 how the building is built to make sure that it is safe</p> <p>8 and the operation of whatever facility it is</p> <p>9 operating safely. The setbacks are basically for the</p> <p>10 community to make sure that, if anything does happen</p> <p>11 with the safety of that building, which is what PHMSA is</p> <p>12 responsible for, doesn't affect the community.</p> <p>13 COMMISSIONER CHRISTMANN: And then same</p> <p>14 question. Because two pages later the judge said that</p> <p>15 setbacks are unenforceable as they create dual safety</p> <p>16 regulations and compete with the Secretary of</p> <p>17 Transportation's spectrum of duties.</p> <p>18 MS. LAWYER: That's what that judge said in that</p> <p>19 opinion.</p> <p>20 COMMISSIONER CHRISTMANN: Okay. Now in your</p> <p>21 ordinance specifically, one thing that I've been wanting</p> <p>22 to ask for a long time. So there's some townships that</p> <p>23 you said are covered and some are not. And so like on</p> <p>24 the -- what's your setback from residences, the</p> <p>25 distance? I can't remember.</p> <p>PAGE 42</p>	<p>1 COMMISSIONER CHRISTMANN: Okay. And you made a</p> <p>2 filing at one point in late August that was Docket 380.</p> <p>3 Do you happen to have that with you?</p> <p>4 MS. LAWYER: I'll pull it up.</p> <p>5 COMMISSIONER CHRISTMANN: No. I gave you the</p> <p>6 wrong number. That was Emmons County's. Yours was 378.</p> <p>7 MS. LAWYER: And what was the number again? I</p> <p>8 apologize.</p> <p>9 COMMISSIONER CHRISTMANN: The docket number?</p> <p>10 MS. LAWYER: Yes.</p> <p>11 COMMISSIONER CHRISTMANN: 378.</p> <p>12 MS. LAWYER: Thank you.</p> <p>13 (Pause)</p> <p>14 MS. LAWYER: Okay, I apologize for the delay. I</p> <p>15 have that up now.</p> <p>16 COMMISSIONER CHRISTMANN: Okay. Would you go to</p> <p>17 the second page please and then to paragraph 3?</p> <p>18 MS. LAWYER: Yes.</p> <p>19 COMMISSIONER CHRISTMANN: So you start out, the</p> <p>20 first little over four lines and -- is legal language</p> <p>21 and you cite the section. It's subsection a. And then</p> <p>22 starting from there, the next several lines, you have</p> <p>23 cited as 49-22.1-01(7)(a) and it doesn't read the way my</p> <p>24 copy of that section reads.</p> <p>25 MS. LAWYER: Yes. I cited the wrong number. It</p> <p>PAGE 44</p>

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<p>1 should have been -- let's see. I put "Gas or liquid 2 energy conversion facility" and it should have been "Gas 3 or liquid transmission facility." 4 COMMISSIONER CHRISTMANN: Correct. And that was 5 my concern. This is out there that -- a quote from the 6 law that a gas or liquid energy conversion facility 7 includes, and on the way through it. And that's an 8 error; correct? 9 MS. LAWYER: Does not. It's transmission 10 facility. That was an error, yes. 11 COMMISSIONER CHRISTMANN: Okay. Thank you. I 12 have no other questions. 13 MS. LAWYER: Thank you. 14 ALJ HOGAN: Mr. Dawson? I can't see you way 15 down there. No questions? 16 SUBSTITUTE DECISIONMAKER DAWSON: No questions. 17 ALJ HOGAN: All right. 18 MS. LAWYER: Thank you. 19 ALJ HOGAN: All right. Thank you, Ms. Lawyer. 20 All right. The next party on my list is 21 Bismarck intervenors so Mr. Bakke. 22 MR. BAKKE: Thank you, Judge. 23 Good afternoon, Commissioners. 24 I think Emmons County and Burleigh County's 25 attorneys have done a good job of establishing the first</p> <p>PAGE 45</p>	<p>1 show the location will produce minimal adverse impacts 2 and effects on the environment and the welfare of the 3 citizens of North Dakota and they failed to meet their 4 burden to show the project will minimize adverse human 5 and environmental impact. 6 And since that decision they have brought 7 forward nothing to this Commission to address those 8 issues. And that's really the first step. And that's 9 why all of this is premature. So that's the issue 10 which, of course, the Commission is going to have to 11 address, is: Is the proposed pipeline reroute which 12 they have now submitted to the Commission in a location 13 that will produce minimal adverse impacts on the 14 environment and the welfare of the citizens? 15 Now we've provided to the Commission today two 16 maps, and that is Exhibits 200 and 201, Warford 200 and 17 Warford 201. And Warford 200 shows the reroute that 18 they have provided. And it's kind of interesting to 19 note that all they have presented this Commission with 20 in terms of the reroute is what's in Docket 386 21 submitted in September, which really provides little 22 meaning -- little meaningful information to the 23 Commission about their reroute and in some respects is 24 inaccurate. 25 So if we look at the earlier version of what</p> <p>PAGE 47</p>
<p>1 point that we raised in our arguments which is that this 2 request is premature. It's not timely. And I'll 3 explain in a moment the reasons, but I think one of the 4 primary reasons that Ms. Lawyer just hit on is that, to 5 our knowledge, there is no request for a construction 6 permit by Summit at this point for a pipeline. They 7 have simply applied for a certificate of site 8 compatibility. 9 So the whole provision that they rely on in 10 trying to argue to the Commission that there should be 11 no local ordinances or requirements is not on point. 12 They rely on subsection 2(b) only and they say -- which 13 clearly provides that it deals with, quote, "a permit 14 for the construction," unquote. And that's not what is 15 before this Commission at this point. This is a request 16 at this point for a site compatibility certificate and 17 nothing more. And so Mr. Braaten and Ms. Lawyer are 18 absolutely correct that for a number of reasons those 19 local requirements are in place and very much alive in 20 the other provisions of subsection 2 of 49-22.1-13. 21 So there's a number of threshold issues before 22 this Commission that the Commission articulated at its 23 August 4 decision in this case that it said Summit had 24 not met. And just to briefly review, the commissioners 25 said that Summit failed to meet its burden of proof to</p> <p>PAGE 46</p>	<p>1 they submitted on their original application, that's 2 Warford 201. And what you can see is that on the 3 eastern side of the pipeline reroute, contrary to what 4 Summit has been publicizing in the media and elsewhere, 5 is they did not move that eastern route that they 6 previously requested to any extent to the east. They 7 kept it in the same footprint. In fact, you'll see -- 8 and these are based on GIS data by Burleigh County 9 showing the reroute location and also showing the 10 original route location. In some small areas they 11 actually are proposing on their reroute to move the 12 pipeline closer to the city of Bismarck. That's what 13 the GIS data shows, is that they're trying to move it. 14 And that's in particular in relation to Silver Ranch, is 15 the area that would be impacted. 16 Now there's some other law that has to be read 17 in conjunction with North Dakota Century Code 22-13.1, 18 and that is 49-22.1-02, which is the statement of 19 policies that also applies. And what that policy said 20 -- because all these statutes have to be read together. 21 What NDCC 49-22.1-02 says is "The policy of this state 22 is to site energy conversion facilities and to route 23 transmission facilities in an orderly manner compatible 24 with environmental preservation and the efficient use of 25 resources. Sites and routes must be selected to</p> <p>PAGE 48</p>

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<p>1 minimize adverse human and environmental impact."</p> <p>2 So regardless of the application of 49-22.1-13,</p> <p>3 they would still have to meet that criteria. And so</p> <p>4 until they select a route that meets that statement of</p> <p>5 policy and meets that criteria, it would be premature to</p> <p>6 issue a certificate.</p> <p>7 The other thing -- and Ms. Lawyer talked about</p> <p>8 the statute and that's the March 6th statute that they</p> <p>9 -- that Burleigh County adopted and what that statute</p> <p>10 dealt with -- and that is previously Warford 114. What</p> <p>11 that statute dealt with was dealing with the issue of</p> <p>12 providing safety procedures and protocols upon request</p> <p>13 to landowners within the site boundaries and to</p> <p>14 interested persons.</p> <p>15 And we've marked as Exhibits Warford 202 and</p> <p>16 Warford 203 what Summit has done since the PSC's initial</p> <p>17 decision on August 4. You can see Exhibit 202 is dated</p> <p>18 August 28, 2023, from Summit. And it's a draft</p> <p>19 emergency response plan, which clearly says on it</p> <p>20 "draft" and just contains generic information. Nothing</p> <p>21 specific to Burleigh County at all.</p> <p>22 And Warford Exhibit 203 is their initial</p> <p>23 response tactic provided to Burleigh County, and that's</p> <p>24 blank. It's just a template with no information on it.</p> <p>25 Where it says "Response Strategy," it doesn't even have</p> <p>PAGE 49</p>	<p>1 case, and the citation for that is 286 N.W.2d 792, and</p> <p>2 not coincidentally, it involves Burleigh County and what</p> <p>3 it did in that case involving a special use permit.</p> <p>4 And that's another thing that Summit has failed</p> <p>5 to comply. That's why this is premature. They have the</p> <p>6 -- they have the cart before the horse. And this is</p> <p>7 another reason why, is because they've never applied for</p> <p>8 a special use permit with Burleigh County. What the</p> <p>9 special use permit says is they should apply for that</p> <p>10 first, and then their first right of appeal is to this</p> <p>11 commission. They've never applied for a special use</p> <p>12 permit. That is the first thing they must do. And then</p> <p>13 there's also a variance procedure available to them</p> <p>14 under the Burleigh County ordinance.</p> <p>15 And that's exactly what the <i>Shaw v. Burleigh</i></p> <p>16 <i>County</i> case addressed, is a special use permit, in that</p> <p>17 case for a mobile home that someone wanted to place in a</p> <p>18 residential area, and if Burleigh County does not allow</p> <p>19 that, it's a standard of arbitrary and capricious. In</p> <p>20 other words, it has to be determined that the county's</p> <p>21 actions were not justifiable. And they haven't applied</p> <p>22 for that special use permit, and that would be step one</p> <p>23 that they would have to do.</p> <p>24 And so the statute -- or the ordinances by</p> <p>25 Burleigh County, both the one -- both of which deal with</p> <p>PAGE 51</p>
<p>1 the latitude or longitude, the location, distance from</p> <p>2 release sources. It's empty. They've done nothing to</p> <p>3 comply with that aspect which the Commission said was</p> <p>4 deficient.</p> <p>5 And if we look back at the ordinance from</p> <p>6 Burleigh County, they're supposed to provide safety</p> <p>7 procedures and protocols upon request, not only to</p> <p>8 Burleigh County but to landowners within the site</p> <p>9 boundaries and to interested persons. That has not been</p> <p>10 done.</p> <p>11 And then another factor that needs to be</p> <p>12 considered here, because they talk about -- Summit talks</p> <p>13 about state statutes from Iowa and other locations, but</p> <p>14 it's important to recognize that in North Dakota, under</p> <p>15 the Century Code, North Dakota Century Code 11-33-01</p> <p>16 gives statutory power to the counties to regulate</p> <p>17 properties.</p> <p>18 And that's why the reading that Ms. Lawyer gave</p> <p>19 and Mr. Braaten gave, 49-22.1-13, is directly on point.</p> <p>20 Because if this was interpreted in the way that Summit</p> <p>21 says it should be interpreted, it would contradict North</p> <p>22 Dakota Century Code 11-33-01 giving statutory power to</p> <p>23 the counties to regulate properties.</p> <p>24 And, in fact, there's a Supreme Court decision</p> <p>25 directly on point, which is the <i>Shaw v. Burleigh County</i></p> <p>PAGE 50</p>	<p>1 safety and both of which deal, to some extent, with land</p> <p>2 use, cover both bases. They cover not only the zoning</p> <p>3 requirements and the land use requirements. They also</p> <p>4 address the public safety issues.</p> <p>5 So let's take an example of zoning. Nobody is</p> <p>6 telling in a traditional sense to Summit "You can't put</p> <p>7 your pipeline in a certain location in Burleigh County."</p> <p>8 You know, zoning is for commercial land. What can you</p> <p>9 do in a commercial area, what can you put in a</p> <p>10 residential area.</p> <p>11 They can put this in many locations throughout</p> <p>12 Burleigh County. And the current map, Exhibit 200,</p> <p>13 shows, when you look at the white townships there, there</p> <p>14 are many routes through different townships, both to the</p> <p>15 east of Bismarck and to the north of Bismarck, where</p> <p>16 they could go where these Burleigh County ordinances do</p> <p>17 not apply. There are no ordinances, to our knowledge,</p> <p>18 in those townships that say you can't put a pipeline, a</p> <p>19 CO2 pipeline, in a more remote location further away</p> <p>20 from the city of Bismarck for the safety of the</p> <p>21 citizens. Burleigh County has not taken the position</p> <p>22 that it can't go anywhere in Burleigh County. Clearly,</p> <p>23 there is a route.</p> <p>24 So when they say there is no route in Burleigh</p> <p>25 County, that's clearly wrong. There are only</p> <p>PAGE 52</p>

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<p>1 approximately 25 percent of the townships which are</p> <p>2 governed by or who are part of what have been adopted</p> <p>3 under these two ordinances. So there's many locations</p> <p>4 where they can go.</p> <p>5 And they also claim, well, this is contrary to</p> <p>6 state law, which they say -- they say the Burleigh</p> <p>7 County and Emmons County ordinances conflict with state</p> <p>8 law promoting a policy of carbon sequestration. That's</p> <p>9 false.</p> <p>10 If you look at North Dakota Century Code</p> <p>11 38-22-01, that statute merely makes a broad policy</p> <p>12 statement that says, quote, "It is in the public</p> <p>13 interest to promote the geological storage of carbon</p> <p>14 dioxide." Doesn't say anything about where the</p> <p>15 transmission lines can go. Doesn't say anything about</p> <p>16 they can be put within a certain distance of a city. It</p> <p>17 doesn't say anything to suggest that the state</p> <p>18 supercedes or preempts the county in regulating land</p> <p>19 use, as Summit is arguing. The statute says nothing</p> <p>20 about CO2 pipelines or where they can be located. So</p> <p>21 these county ordinances do not contradict state law.</p> <p>22 And then the other thing is the PHMSA. And,</p> <p>23 Commissioner Christmann, I agree with you that federal</p> <p>24 court decision in Iowa says what it says. However, what</p> <p>25 it doesn't say is that this federal court judge in Iowa,</p> <p>PAGE 53</p>	<p>1 pipelines will operate and is governed by state and</p> <p>2 local law."</p> <p>3 And what a federal judge says or how a judge</p> <p>4 interprets what PHMSA -- what that judge thinks PHMSA</p> <p>5 can do does not trump or overrule what PHMSA itself has</p> <p>6 recently said.</p> <p>7 This letter was provided to Summit just 12 days</p> <p>8 before they filed this motion for preemption. They knew</p> <p>9 that PHMSA had said specifically that it was up to the</p> <p>10 state governments, it was up to the counties, to</p> <p>11 determine where these pipeline -- where CO2 pipelines go</p> <p>12 and that PHMSA doesn't have jurisdiction over that issue</p> <p>13 and, in fact, said it's specifically left with the</p> <p>14 counties.</p> <p>15 And so for all those reasons, this is premature</p> <p>16 and what we're requesting to happen here is that the</p> <p>17 Commission proceed with an additional hearing date or</p> <p>18 dates and determine that subsection 49-22.1-13 subpart b</p> <p>19 has no application at this point because it's a request</p> <p>20 for a permit for construction, which is not before the</p> <p>21 Commission.</p> <p>22 So unless the commissioners have any questions</p> <p>23 for me which I'd be happy to respond to, I appreciate</p> <p>24 your -- the opportunity to speak.</p> <p>25 ALJ HOGAN: All right. Thank you.</p> <p>PAGE 55</p>
<p>1 applying Iowa law, Iowa setbacks, can preempt what PHMSA</p> <p>2 says on pipelines.</p> <p>3 And that's why we attached Attachment A to our</p> <p>4 brief, which is the PHMSA letter to Mr. Blank, the CEO</p> <p>5 of Summit, dated September 15, 2023. And Mr. Braaten</p> <p>6 read to you part of that. He read part of what PHMSA</p> <p>7 said in that regard saying that it's up to the counties</p> <p>8 and the local jurisdictions and the state to determine</p> <p>9 where CO2 pipelines can go.</p> <p>10 That judge has no basis to say PHMSA can't</p> <p>11 decide. In fact, she did say PHMSA can decide where</p> <p>12 pipelines are to be sited. And they have said that is</p> <p>13 up to the state, that is up to the county, that is up to</p> <p>14 the local jurisdiction, not the Federal Government.</p> <p>15 In fact, on the first page of that letter to</p> <p>16 Mr. Blank, the CEO of Summit, Mr. Mayberry, who is the</p> <p>17 associate administrator for safety, says, in the third</p> <p>18 paragraph, "While the Federal Energy Regulatory</p> <p>19 Commission has exclusive authority to regulate the</p> <p>20 siting of interstate gas transmission pipelines, there</p> <p>21 is no equivalent federal agency that determines siting</p> <p>22 of all other pipelines, such as carbon dioxide</p> <p>23 pipelines. Therefore, the responsibility for siting new</p> <p>24 carbon dioxide pipelines rests largely with the</p> <p>25 individual states and counties through which the</p> <p>PAGE 54</p>	<p>1 Are there any questions from commissioners or</p> <p>2 Mr. Dawson?</p> <p>3 UNIDENTIFIED SPEAKER: I do not.</p> <p>4 ALJ HOGAN: All right. Well, thank you,</p> <p>5 Mr. Bakke.</p> <p>6 All right. Next on my list is the landowners --</p> <p>7 landowner intervenors. So, Mr. Leibel, you can go</p> <p>8 ahead.</p> <p>9 MR. LEIBEL: May it please the Commission. I</p> <p>10 provided to you, each of the commissioners with copies</p> <p>11 to all the counsel, a little blue packet that includes</p> <p>12 where I printed out the statutes that are at issue</p> <p>13 because I'm a visual. That's kind of how I work.</p> <p>14 And I would direct the Commission to the first</p> <p>15 tab, which is the statute we're talking about here</p> <p>16 today. And one of the things that I think that I wanted</p> <p>17 to share with the Commission and help the Commission, at</p> <p>18 least from my perspective, how I see this, I think</p> <p>19 beginning with the first sentence of the statute, it</p> <p>20 talks about "The issuance of a certificate of site</p> <p>21 compatibility or a route permit is," and, you know, it's</p> <p>22 the sole site or route approval.</p> <p>23 Now, in determining what -- how to interpret the</p> <p>24 statute, I've included under tab 2 which is another</p> <p>25 statute. This is in the -- also from the Century Code</p> <p>PAGE 56</p>

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<p>1 and it talks about how the Legislature wants their 2 statute construed. And in the second sentence from that 3 very brief statute it says "Technical words and phrases 4 and such others as have acquired a peculiar and 5 appropriate meaning in law, or as are defined by 6 statute, must be construed according to such peculiar 7 and appropriate meaning or definition." 8 And I point that out because in this case we do 9 have definitions, a definition section. Under the third 10 tab of this packet I've included a printout of 11 49-22.1-01, and that's our definitions section that 12 governs this area. 13 And as you can see, the very first entry under 14 the definitions section is for a "certificate." And 15 that means a certificate of site compatibility or a 16 certificate of corridor compatibility. Both of those 17 words are also defined. A "corridor" means an area of 18 land where a designated route may be established. A 19 "site" means the location of a gas or energy conversion 20 facility. 21 I also printed -- under tab 4 is a printout of 22 49-22.1-06. And this is the specific statute in North 23 Dakota that governs certificates. And, you know, the -- 24 if you can skip down to the very bottom of this statute, 25 No. 5, as a certificate and when a certificate is</p> <p>PAGE 57</p>	<p>1 would say there's two things, I guess, to be specific. 2 The first is the amendments we're looking at is 3 a response to DAPL, what happened with DAPL. This is a 4 2017 statute. The other thing that the legislative 5 history is very clear about is that this is a two-step 6 process. It was envisioned to be a two-step process and 7 under the statute it's a two-step process. 8 Now the statute was also amended at this exact 9 same time to allow parties to apply for both at the same 10 time. And so Mr. Bakke had said earlier a certificate 11 was applied to. My understanding is it was a joint 12 application for both a certificate and a permit, but 13 this is a two-step process even if it's only 14 accomplished with one hearing. 15 And what I would point the Court -- or the 16 Commission to is under subpart 6 is the legislative 17 history that I previously filed with the Commission, but 18 if you will jump to page 23 of that legislative history, 19 there's a discussion between the energy industry's 20 lobbyist where they are talking about this two-step 21 process, how it works. 22 And about midpoint through the testimony of 23 Mr. Kranda, which is the third paragraph from the bottom 24 on page 23, he's talking about what he gets as a handout 25 from the PSC. And it says "If you look at my handout is</p> <p>PAGE 59</p>
<p>1 applied for, "The commission may designate a site or 2 corridor for a proposed facility following the study and 3 hearings provided for in this chapter." 4 And I'm going to skip to the very last sentence 5 of this subpart 5. "Upon designation of a site or 6 corridor, the commission shall issue a certificate of 7 site compatibility." So a certificate is -- the 8 intention is to designate a site or corridor. 9 If you flip to tab 5, I've printed out for you 10 the very next statute. This is an application for a 11 permit. And "An application for a permit for a gas or 12 liquid transmission facility within a designated 13 corridor --" there's the magic language from the prior 14 statute "-- must be filed no later than two years after 15 the issuance of the certificate." 16 And, you know, again, the last subpart, subpart 17 5, talks about a permit includes the commission 18 designating a specific route. 19 One of the things, there's been a lot of 20 discussion of legislative history. And I share -- the 21 same warnings you've heard before is that it's difficult 22 to read too much into specific words or terms that are 23 used, but there are a couple things I think that are 24 established clearly. One of those things is that the 25 Legislature, when they were evaluating this -- and I</p> <p>PAGE 58</p>	<p>1 a certification by the PSC, deals with DAPL corridor 2 findings and certification letter. The certification 3 letter says, and the PSC has this for each applicant, 4 says, 'Company agrees to comply with all rules and 5 regulations of other agencies having jurisdiction, 6 including all city, township, and county zoning 7 regulations.'" And the lobbyist says, "So the PSC is 8 the one telling us you must comply and the locals aren't 9 losing any control. We're not trying to take away from 10 what they do and what we have to comply with." 11 Now, the following paragraph, the 12 representative, Mr. Heinert, says, Well, wait a minute. 13 "It says that they must preempt any local land use or 14 zoning regulations. So if a local county or local city 15 has a zoning ordinance, the pipeline is going through 16 there, they have to change their zoning ordinance." 17 And this is the part where Chairman Porter 18 brings up the issue that I'm taking away from this and I 19 think is supported by all the statutes. It's a two-step 20 process. And he says, "Mr. Kranda, I think it would be 21 helpful, because this sub 2 is broken into two things, I 22 think it would be helpful if you broke it down into step 23 one, certificate of site capability which may not 24 supersede or preempt, and then step two, the permit for 25 construction which has to because all the other stuff</p> <p>PAGE 60</p>

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<p>1 has been looked at during the certification process. I 2 think, so we keep it straight, what we're performing in 3 each of the processes, even inside of this amendment may 4 not be correct. Each of these need to be broken down 5 into A, B, C." 6 And then Mr. Kranda says, "I think that helps. 7 I didn't see that. Yeah, the first sentence, you don't 8 because site compatibility, the certificate for site 9 compatibility may not supersede." 10 And I provided that so you can see it. But 11 flipping back to tab 1, which is our statute, that 12 provides -- Chairman Christmann had asked a question 13 about not knowing how to read subpart 2(b); it didn't 14 seem to make sense. They were not consistent unless you 15 read it the way Summit had suggested. 16 And the response to that, and I'm going to skip 17 over subpart 2(a) because, you know, as the Commission 18 pointed out, that deals with a conversion facility, 19 which is also a defined term that wouldn't include this 20 pipeline. But jumping to subpart b, it says "Except as 21 provided in this section, a permit for the construction 22 of a gas or liquid transmission facility within a 23 designated corridor supersedes and preempts any local 24 land use or zoning regulations." 25 My understanding from reading the legislative</p> <p>PAGE 61</p>	<p>1 rules, physical addressing, dust control measures, or 2 road maintenance. And my reading of that section of the 3 statute is that language that follows, again consistent 4 with this two-step process, the language that follows 5 modifies road use agreements. 6 Finally, when we get to (d), this is the first 7 place we talk about a certificate, is under (d). In (a) 8 we have a certificate for a conversion facility. In (d) 9 we talk about, finally, a certificate for a gas or 10 liquid transmission facility. Under subpart (d), it's 11 superseded if it's not provided within the appropriate 12 time by the local counties. And so my interpretation of 13 this statute is that the certificate process requires 14 the locals to have their say, at least the way this is 15 written. 16 And I understand that Summit -- you know, 17 frankly, Summit does make a policy argument for why that 18 should be expanded, but it's not in the statute, at 19 least as I see it. The statute is very clear, once you 20 -- once you accept that there are two parts to the 21 process, I don't think that you can use a permit to 22 preempt a certificate when a permit is expressly said 23 it's subject to a designated corridor. And in that 24 designated corridor, the local ordinances and rules are 25 part of the deal.</p> <p>PAGE 63</p>
<p>1 history is that one of the big concerns with DAPL, and 2 some of you may have been on the Commission at that 3 time, is a permit had been issued and subsequently there 4 were all kinds of problems where there was a conflict 5 and local jurisdictions were refusing to allow this. 6 And my understanding of subpart b is that once a permit 7 is issued, so we already have gone through and got the 8 certificate, once the permit is issued, that is the law 9 of the land. There is no more local -- the locals don't 10 have the ability at that time to influence or affect or 11 otherwise interfere with the authority that's been 12 granted by a permit. 13 And so when I read that, that's all I see, is 14 that's just saying that once you have a permit, you -- 15 any local ordinance or regulation is superseded and 16 preempted. And my understanding is that's a direct 17 response to what happened with DAPL. 18 So moving to subpart 2(c), I agree with Summit's 19 attorney in evaluating this. I believe that that first 20 sentence deals with road use agreements, which, again, 21 if you flip to your handy-dandy definition section under 22 tab 3, we have a definition for "road use agreement" and 23 that road use agreement includes permits required for 24 extraordinary road use, road access points, approach or 25 road crossings, public right of way setbacks, building</p> <p>PAGE 62</p>	<p>1 And if anyone has any questions for me, I'd be 2 happy to answer them. 3 ALJ HOGAN: All right. Thank you. 4 Are there any questions for Mr. Leibel? 5 COMMISSIONER CHRISTMANN: I do not. 6 COMMISSIONER HAUGEN-HOFFART: I do not. 7 ALJ HOGAN: No questions. All right. Thank 8 you, Mr. Leibel. 9 All right. Next party is Laborers Union, 10 Mr. Pranis. 11 MR. PRANIS: Thank you, Judge Hogan and 12 Commissioners. I'm a member of the Laborers Union. 13 We like to keep things simple so I'll try to 14 keep this simple and brief. The question that we 15 understand is before us today is who has the authority 16 to decide where a pipeline can or can't be located in 17 the state of North Dakota. 18 We're not here today because we necessarily 19 support Summit's project. As the commissioners are 20 aware, we've expressed support for the goals but have 21 also expressed concerns and are still evaluating changes 22 that Summit has made to its application. 23 What we are here for today is to support the 24 consistent application of state law and rule regarding 25 the routing of linear infrastructure which is</p> <p>PAGE 64</p>

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<p>1 foundational for the development of the critical 2 infrastructure in North Dakota and across the country. 3 We believe the question that will be decided 4 here, hopefully today and certainly in this proceeding, 5 is more important than the question of whether to issue 6 Summit a permit to build the proposed project. In our 7 view as someone who represents workers who build this 8 kind of infrastructure, preserving the integrity of the 9 state-permitting process for linear infrastructure, 10 specifically pipelines and transmission lines, is 11 absolutely vital to maintaining reliable systems and 12 orderly development of energy resources, and we believe 13 that's why that responsibility is vested solely with the 14 Public Service Commission and not with local governments 15 in the case of linear infrastructure. 16 Our reading of the law is clear. The 17 Legislature distinguishes very clearly between 18 non-linear or point facilities such as a gas processing 19 plant and a linear facility such as a pipeline. The 20 Commission, according to the law, may not issue a 21 certificate of site compatibility or designate a site 22 that is contrary to the local rules when we're talking 23 about a fixed point facility. On the other hand, the 24 law makes clear that the Commission may issue a permit 25 that supersedes and preempts local land use and zoning</p> <p>PAGE 65</p>	<p>1 commission, with the commission in Minnesota, trying to 2 find routes for critical pipeline projects, right, that, 3 frankly, have turned into political footballs in many 4 cases because of local opposition, some of that local 5 opposition that we sympathize with and understand but, 6 fundamentally, makes it very, very difficult to site 7 linear infrastructure. We believe that's why there's a 8 very clear difference in the law that directs the 9 Commission to take responsibility for this siting and 10 that ultimately puts local governments in an advisory 11 role. 12 So what does the law provide for with respect to 13 transmission? When the law requires that or permits, 14 rather, local governments to file their local zoning 15 ordinances and requirements, that's an opportunity to 16 inform the Commission, like any other facts that are 17 part of the process, that's information that should be 18 weighed by the Commission in designating, first, a 19 corridor and, second, designating the final route for a 20 route permit. 21 And so it is appropriate for the Commission to 22 consider those ordinances, the reasons behind them, what 23 those local priorities are, what those concerns are, no 24 different than considering testimony that might be 25 provided by local governments or letters or testimony by</p> <p>PAGE 67</p>
<p>1 regulations provided that the Commission makes a finding 2 that those regulations are unduly burdensome. 3 The Legislature makes a similar distinction with 4 respect to electric power infrastructure in almost 5 identical language. The siting of a conversion facility 6 such as a wind farm must conform to local land use 7 requirements. The routing of a transmission line does 8 not if the Commission finds the local land use 9 requirement is unduly restrictive. 10 It's pretty clear here there's only two 11 possibilities. One is that local jurisdictions have the 12 ability to veto a proposed location and the other is 13 that the Commission ultimately decides with input from 14 local governments, with consideration to local concerns 15 and to the local land use ordinances, but ultimately 16 it's a decision by the Commission. 17 So why the difference? The North Dakota Code 18 recognizes that to advance the purposes of the State, 19 the Commission needs the clear authority to establish 20 corridors and routes for linear infrastructure. There 21 are many potentially suitable sites for point 22 infrastructure like a wind farm or a gas processing 23 plant. There are very few to get between point A and 24 point B. 25 We know this because we've spent years with this</p> <p>PAGE 66</p>	<p>1 others or other evidence in the proceeding. 2 It is evidence that does not make it binding law 3 on the Commission. And, in fact, it's clear that the -- 4 it's stated differently in the two different sections, 5 but within the pipeline statute it's simply a 6 preponderance of the evidence, which is a very low 7 threshold. In other words, there is not a burden on the 8 applicant to prove beyond a reasonable doubt or beyond 9 any particular measure that there's a burden. All they 10 have to do is show that there's more evidence that it's 11 unduly burdensome than not. And that's enough for the 12 Commission to decide. Effectively, this is putting it 13 clearly within the Commission's purview to make that 14 decision. 15 And what does that mean in terms of protecting 16 the concerns of local residents? It means that the 17 Commission has to take those concerns on. And that's 18 what the criteria that are laid out allow the Commission 19 and instruct the Commission to do, is to consider all of 20 those local impacts: Environmental impacts, human 21 impacts, socioeconomic impacts, impacts on the shippers. 22 Those are the things the Commission is asked to balance. 23 And we would like to point out that we think the 24 Commission -- this Commission has a track record not 25 only of clearly considering even the smallest local</p> <p>PAGE 68</p>

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<p>1 concerns that are brought to them by landowners in 2 multiple cases, in both a siting case and a routing 3 case, and local governments, but actively, you know, 4 being willing to require -- to encourage applicants to 5 address those issues.</p> <p>6 And, finally, the Commission has not been a 7 rubber stamp on infrastructure. While most projects are 8 eventually approved because the applicants do the things 9 needed to conform, right, not every project is approved.</p> <p>10 And so we think the Commission has not only the 11 authority but has shown that it has the interest of 12 local -- of local residents at heart and is the best way 13 to do this.</p> <p>14 The concern that we have, if we go a different 15 direction -- I actually think that the map that 16 Mr. Bakke provides, W201, is a great example of the 17 slippery slope that we go down when we move from a 18 state-based permitting system to allowing local 19 governments to effectively veto routing for not only 20 pipelines but potentially transmission lines because 21 it's not clear what the legal distinction would be in a 22 transmission line case.</p> <p>23 Now if we look at the map here, there's one 24 potential path that's not -- that's marked in white 25 through Trygg Township. Now if Trygg were to implement</p> <p>PAGE 69</p>	<p>1 miles-long setbacks that are established, you start 2 applying that and assume that every local jurisdiction 3 should at least be allowed to implement equally rigorous 4 requirements, and there's nowhere left to site a 5 pipeline. And then we end up in a place where siting's 6 a political football.</p> <p>7 I live and work primarily in Minnesota. We have 8 a nightmare process of trying to get one single pipeline 9 through even with state permitting. We're seeing these 10 sorts of policies being weaponized all over the country 11 in order to prevent development of critical 12 infrastructure.</p> <p>13 And so we have confidence in the North Dakota 14 Commission to take local concerns seriously. We think 15 that it's not clear how you put the sort of like -- how 16 you put the worms back in the can if we're going to 17 allow any jurisdiction to set, you know, extremely broad 18 policies and then force companies to try to work around 19 or risk having their pipeline route invalidated at the 20 end.</p> <p>21 Thank you for your time.</p> <p>22 ALJ HOGAN: All right. Thank you, Mr. Pranis.</p> <p>23 Any questions from commissioners or Mr. Dawson?</p> <p>24 COMMISSIONER CHRISTMANN: None.</p> <p>25 COMMISSIONER HAUGEN-HOFFART: I have a question</p> <p>PAGE 71</p>
<p>1 -- were to suddenly adopt prior to the next hearing 2 their own ordinance similar to the Burleigh County 3 ordinance, it's possible that there would be no pathway 4 anymore through Burleigh County, right. If we accept 5 the idea that each township and each county should be 6 able to establish any of its own ordinances at any time 7 within ten days prior to the hearing, then effectively 8 we've created something where it's impossible to 9 engineer any route with any certainty that that route 10 can get through. So now we're looking at -- we're going 11 into Kidder County because we can't get through Burleigh 12 County potentially.</p> <p>13 And so I think when we're thinking about what's 14 unduly -- what's unduly burdensome, we believe that the 15 evidence already in the record shows it's unduly 16 burdensome and that the test is, if this same policy 17 were applied to each jurisdiction, would it be 18 reasonable to site a pipeline? Because it's not 19 reasonable to say that Burleigh County should be allowed 20 to have extremely restrictive policies and Emmons 21 County, but the county next door isn't allowed to have 22 similarly restrictive policies or that those individual 23 townships that set their own rules, or cities, can have 24 those same restrictive policies.</p> <p>25 And you can imagine that, with the kinds of</p> <p>PAGE 70</p>	<p>1 just for clarification.</p> <p>2 When you were giving the scenario about the 3 counties, like Trygg County, the map you referred to --</p> <p>4 MR. PRANIS: The township?</p> <p>5 COMMISSIONER HAUGEN-HOFFART: Yep.</p> <p>6 -- all of a sudden doing an ordinance and then 7 they would be prohibited, wasn't Burleigh County or 8 Emmons County saying that the company can go before them 9 and ask for a waiver? So what's prohibiting the company 10 to go before and ask for it?</p> <p>11 I mean, I think it -- I understand your intent.</p> <p>12 I absolutely do. We want to make this simple. And I 13 thank you for the compliments on the Commission in 14 listening to it. But explain yourself a little bit more 15 on why that would be burdensome if we want some 16 collaboration.</p> <p>17 MR. PRANIS: Thank you, Commissioner.</p> <p>18 I think the concern -- our concern is twofold.</p> <p>19 One, it's fairly clear that in this case these 20 ordinances were established as poison pills; in other 21 words, the timing of the ordinances and the extreme 22 setbacks. And I think if you look at the changes to 23 Emmons County, it's fairly clear that it went from a 24 pretty flexible and permissive policy for looking at all 25 types of pipelines to an extraordinarily restrictive</p> <p>PAGE 72</p>

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<p>1 policy that would make it very difficult to site 2 pipelines. 3 And it is certainly possible that the company 4 would be able to obtain a waiver. I think our big 5 concern is that is the kind of thing that chills 6 development. Because when any developer looks at this 7 and says, "I think I can build this project, I have to 8 get all of these easements, I have to deal with all of 9 these environmental considerations and a route that is 10 appropriate and that the Commission will find 11 appropriate," if -- if you then say, "Look, I can go and 12 secure all these easements, but at any time before the 13 hearing any local jurisdiction could, out of nowhere, 14 propose a new policy that they might or might not waive 15 for us," I think it makes it incredibly difficult to 16 develop. 17 And to some degree if -- if basically the only 18 way the policy works is if the company has to be granted 19 a waiver, then it doesn't mean much to begin with. Then 20 I think you've effectively preempted anyway. 21 So I think it's better for the public to know 22 that they need to go to the Commission and that the 23 Commission is who they need to -- who needs to hear from 24 them rather than believing they could go to a local 25 jurisdiction that has authority.</p> <p>PAGE 73</p>	<p>1 it's covering a broad spectrum of things, that broad 2 spectrum would include road use agreements. 3 So there are some issues with that statutory 4 interpretation that just don't work well with the actual 5 language and structure of the statute. 6 Emmons County raised the issue of, well, then 7 why would we be required to submit the ordinances? You 8 know, doesn't that provision get rendered superfluous if 9 preemption is automatic? Chair Christmann noted, "Well, 10 you know, it says 'road use agreements.' Maybe you give 11 them to us so we look for road use agreements." 12 Obviously, that's logical, but there are other 13 reasons too, right. Seeing what those concerns were 14 that are embodied in local regulations may spur certain 15 questions that the Commission has in making its own 16 determinations that it has to make on the ultimate 17 decision. And sometimes, frankly, it's just good to 18 know what's out there that the law regarding the 19 Commission is, in fact, preempting. 20 And while it may sound to some like that is not 21 enough left to be reasonable, I will tell you, and I 22 hate to keep bringing Iowa up, but in the Iowa 23 generating certificate statute, it basically does the 24 exact same thing. Counties come forward -- and actually 25 in that case even the applicant has to discuss here are</p> <p>PAGE 75</p>
<p>1 COMMISSIONER HAUGEN-HOFFART: Thank you. 2 ALJ HOGAN: All right. Thank you, Mr. Pranis. 3 All right. I will return to you, Mr. Dublinske. 4 Would you like to make a reply argument? 5 MR. DUBLINSKE: I would, Your Honor, and I will 6 try and do this in order and try not to repeat some of 7 the arguments that obviously came up from multiple 8 intervenors and try not to repeat Mr. Pranis either and, 9 hopefully, can get through this promptly. 10 I would respond to Emmons County's argument by 11 noting that while they talk about the unique ordinance 12 having been in place since 1980, notably, they really 13 try to sweep under the rug and not even directly answer 14 a question about the change from 200 feet to 8,000 feet 15 for residences, which I think is telling for some of the 16 reasons that Mr. Pranis just discussed. 17 The statutory interpretation argument that 18 Emmons County advanced essentially is that paragraph (c) 19 does all the heavy lifting. And as we mentioned in our 20 initial argument, that renders paragraph (b) largely 21 superfluous. At that point, there's no reason why they 22 would be separate paragraphs if (b) simply says, you 23 know, find everything you need to know about how this 24 works in (c). That also ignores sort of this unique use 25 of the term "road use agreements" in (c). If, indeed,</p> <p>PAGE 74</p>	<p>1 the local ordinances. And the statute is absolutely 2 crystal clear that once the generating certificate is 3 issued by the state board, that all of those local 4 ordinances are expressly preempted, that those counties 5 and cities have to come to the board, participate in 6 that process, and that is their opportunity. But it's 7 still information that the utilities would want. 8 So I don't think it's at all unreasonable or 9 even unusual, knowing that there are other states that 10 do the same thing, for your legislation to be structured 11 the same way. 12 I'm glad that Emmons County brought up the PHMSA 13 letter. I had neglected to address that. But I would 14 encourage you to read that very closely. PHMSA clearly 15 is trying to be as political as possible and offend 16 absolutely nobody, but Summit actually believes that 17 letter is supportive of our position. It is extremely 18 similar, almost verbatim, to a letter that was written 19 to TC Energy that was in front of the federal court 20 judge in Iowa when she made her decision. 21 And, notably, it says repeatedly that, look, 22 PHMSA still has sole authority over safety and still has 23 -- and states and counties still can't conflict with 24 federal law, but this part that the intervenors hang 25 their hats on about, well, local governments have</p> <p>PAGE 76</p>

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<p>1 traditionally exercised broad powers to regulate land 2 use, and it goes on to say including setback distances 3 and property development in the vicinity of pipelines. 4 It doesn't say anything about counties having 5 traditional authority to regulate land use for 6 pipelines. It says in the vicinity of pipelines. 7 And it talks about the county also having a role 8 in protecting safety and how everyone from individuals 9 all the way up has a role. And it gives a list of 10 things that it recognizes local governments have done. 11 And if you look at that list, none of them involve 12 regulating pipelines. All of them involve regulating 13 potential encroachments or potential damages to 14 pipelines. 15 Finally, and this is an issue that I know 16 Commissioner Haugen-Hoffart just talked about with 17 Mr. Pranis, but want to briefly reiterate Summit 18 believes that waivers and variances can't be the answer, 19 that a system that relies on additional waivers and 20 variances is inherently unreasonably restrictive. There 21 is no way you can plan a long lead time, long-planning 22 project based on a series of waivers and variances. 23 Regulatory law has to be knowable and 24 predictable and stable, and we need to be able to go 25 when we start a project and look at what the law is.</p> <p>PAGE 77</p>	<p>1 ahead to the Bismarck landowners, the suggestion that 2 we've only requested a certificate and not a route 3 permit is just simply incorrect. If you look at the 4 introduction to Docket No. 1, it very clearly says that 5 we are applying for both in a combined hearing as 6 permitted by Section 1-08. 7 But I think, you know, if you go back and look 8 at 1-06, which is what has to go on an application for a 9 certificate, 1-07, application for a permit, 1-09, 10 criteria that the Commission is to look at for a 11 certificate, those lists are extensive. And it's 12 telling that nowhere in those extensive lists does it 13 list county ordinances as being relevant, does it 14 mention anything in either direction about preemption. 15 So the only time you find out about the 16 preemptive power or not of a certificate and/or a permit 17 is in 1-13. And for (a) it says on a conversion 18 facility a certificate doesn't preempt and for (b) it 19 says on a transmission facility a permit does. And 20 there is literally nothing anywhere that prohibits a 21 certificate from preempting in any other situation. 22 There's nothing in 1-06, nothing in 1-09. That all 23 comes strictly from 1-13, which we obviously analyzed at 24 length. 25 You know, I would follow up on Chair</p> <p>PAGE 79</p>
<p>1 And if what we're being told is "Well, you can't rely on 2 what we're putting out there in writing, just come ask 3 us for a variance, ask us for a waiver" -- and by the 4 way, because there's exceptions from ordinances, they 5 are inherently more stringent and harder to get than 6 just your run-of-the-mill permit under the ordinance. 7 So we have a real concern about that being the alleged 8 solution. 9 Burleigh County, I think, fundamentally sees 10 safety as much narrower than the federal courts and 11 Federal Government. The comment was made, well, it 12 regulates the safety of the community, not the safety of 13 the pipeline. 14 And I would suggest that PHMSA and federal 15 caselaw clearly suggest that federal law is intended to 16 do both. The <i>Kinley</i> court case at the Eighth Circuit, 17 which I believe is cited in our materials and certainly 18 cited in the Judge Rose decision, broadly looks at 19 preemption and safety. And there it was a financial 20 security, not a specific safety standard. And the court 21 says we see this simply as a proxy for safety and found 22 that it was preempted. 23 The certificate of compatibility issue has come 24 up a couple of times, and let me just sort of address 25 that quickly here. First of all, and I want to jump</p> <p>PAGE 78</p>	<p>1 Christmann's questions about so you could have a route 2 where you have two miles clearance on one side and 3 50 feet on the other. The answer to that, I think, 4 shows just how arbitrary some of these restrictions 5 actually are. 6 The Bismarck landowners, I've talked a little 7 bit about the combined application, but the prematurity 8 argument I have to admit I just don't understand. The 9 notion that a motion to preempt county processes is 10 premature until we've already gone through those county 11 processes seems fundamentally flawed. 12 And while it may be true that there's a general 13 allowance in the Century Code for county control of land 14 use, the general rule of statutory construction is that 15 the newer and more specific prevails. Obviously, 16 pipeline regulation is a specific carveout for this 17 Commission and the amendments to the relevant statute 18 are quite specific and quite recent. 19 With regard to -- 20 ALJ HOGAN: I'll just note, Mr. Dublinske, 21 you're almost at ten minutes. 22 MR. DUBLINSKE: All right. Let me just make 23 sure there's nothing else in here. 24 Yeah, just -- the only other thing I wanted to 25 point out is that the argument that the Leibel</p> <p>PAGE 80</p>

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<p>1 intervenors made that section (b) somehow applies</p> <p>2 post-granting of the permit and section (c) or paragraph</p> <p>3 (c) applies to the preceding seems an unnatural reading,</p> <p>4 to sort of flip the time order around. (C) appears, a</p> <p>5 better reading, to be a specialized subset of (b).</p> <p>6 Your Honor, the most natural reading here is</p> <p>7 Summit's reading. The reading that best supports state</p> <p>8 public policy is Summit's reading. This is a legal</p> <p>9 issue. The Commission can and should address it here</p> <p>10 and now at the outset of the reconsideration. And we</p> <p>11 would ask you to preempt the unreasonably restrictive</p> <p>12 ordinances of Emmons and Burleigh County.</p> <p>13 Thank you.</p> <p>14 ALJ HOGAN: Thank you.</p> <p>15 Are there any other questions from commissioners</p> <p>16 or Mr. Dawson for Mr. Dublinske?</p> <p>17 COMMISSIONER CHRISTMANN: I do not.</p> <p>18 COMMISSIONER HAUGEN-HOFFART: I do not.</p> <p>19 SUBSTITUTE DECISIONMAKER DAWSON: No.</p> <p>20 ALJ HOGAN: All right. Well, thank you all.</p> <p>21 That will conclude our oral arguments for our hearing</p> <p>22 today.</p> <p>23 Are there any closing remarks or comments that</p> <p>24 the commissioners want to make or Mr. Dawson?</p> <p>25 COMMISSIONER CHRISTMANN: I think only that -- I</p> <p>PAGE 81</p>	<p><u>CERTIFICATE OF TRANSCRIPTIONIST</u></p> <p>STATE OF NORTH DAKOTA) ss.</p> <p>I, Lisa A. Hulm, CET-783, a certified electronic transcriber, do hereby certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter, to the best of my professional skills and abilities. I further state that I was not present during these recorded proceedings, and I am only the transcriber of the recorded proceedings.</p> <p>I further certify that I am not a relative or employee or attorney or counsel of any of the parties hereto, nor a relative or employee of such attorney or counsel; nor do I have any interest in the outcome or events of the action.</p> <p>Dated this date of October 13, 2025.</p> <p>----- LISA A. HULM, CET-783</p> <p>The foregoing certification of this transcript does not apply to the reproduction of the same by any means, unless under the direct control and/or direction of the certifying transcriber.</p> <p>PAGE 83</p>
<p>1 don't know about the other decisionmakers here, but my</p> <p>2 preference is to take this under advisement and we'll</p> <p>3 release a decision once we've reached one.</p> <p>4 ALJ HOGAN: All right. Well, then I will note</p> <p>5 for the record that it's 3:51 p.m. and that will</p> <p>6 conclude our hearing for today. Thank you.</p> <p>7 -----</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>PAGE 82</p>	

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